

**PART IV - REPRESENTATIONS AND INSTRUCTIONS**

**SECTION K**

**REPRESENTATIONS, CERTIFICATIONS, AND  
OTHER STATEMENTS OF OFFERORS  
FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)**

**K.1 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO  
INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)**

- (a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989--
  - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
  - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
  - (3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

[End of Provision]

**K.2 52.204-3 TAXPAYER IDENTIFICATION (OCT 1998)**

## (a) Definitions.

"Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

"Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

- (b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.
- (c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

## (d) Taxpayer Identification Number (TIN).

☐ TIN:\_\_\_\_\_.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

- ☐ Sole proprietorship;
- ☐ Partnership;
- ☐ Corporate entity (not tax-exempt);
- ☐ Corporate entity (tax-exempt);
- ☐ Government entity (Federal, State, or local);
- ☐ Foreign government;
- ☐ International organization per 26 CFR 1.6049-4;
- ☐ Other\_\_\_\_\_.

(f) Common parent.

- ☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.
- ☐ Name and TIN of common parent:  
  
Name \_\_\_\_\_  
  
TIN \_\_\_\_\_

[End of Provision]

**K.3 52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)**

- (a) Definition. Women-owned business concern, as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.
- (b) Representation. [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program Representations, of this solicitation.] The offeror represents that it ☐ is a women-owned business concern.

[End of Provision]

**K.4 52.204-6 DUNS UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUN 1999)**

- (a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet Information Services.
- (b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information:
  - (1) Company name.
  - (2) Company address.
  - (3) Company telephone number.
  - (4) Line of business.
  - (5) Chief executive officer/key manager.
  - (6) Date the company was started.
  - (7) Number of people employed by the company.
  - (8) Company affiliation.
- (c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet Home Page at <http://www.customerservice@dnb.com>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at [globalinfo@mail.dnb.com](mailto:globalinfo@mail.dnb.com).

[End of Provision]

**K.5 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (MAR 1996)**

- (a) (1) The Offeror certifies, to the best of its knowledge and belief, that--
  - (i) The Offeror and/or any of its Principals--
    - (A) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
    - (B) Have ( ) have not ( ), within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has ( ) has not ( ), within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

- (b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

[End of Provision]

**K.6 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (MAY 1999) Alternate II (JAN 1999)**

- (a) (1) The standard industrial classification (SIC) code for this acquisition is SIC.
- (2) The small business size standard is \_\_\_\_\_.
- (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

## (b) Representations.

- (1) The offeror represents as part of its offer that it ☐ is, ☐ is not a small business concern.
- (2) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, for general statistical purposes, that it ☐ is, ☐ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.
- (3) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents as part of its offer that it ☐ is, ☐ is not a women-owned small business concern.
- (4) (Reserved)
- (5) (Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, as part of its offer, that--
  - (i) It ☐ is, ☐ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and
  - (ii) It ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(5)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:

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Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

## (c) Definitions.

"Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

"Women-owned small business concern," as used in this provision, means a small business concern--

- (1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

(d) Notice.

- (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.
- (2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--
  - (i) Be punished by imposition of fine, imprisonment, or both;
  - (ii) Be subject to administrative remedies, including suspension and debarment; and
  - (iii) Be ineligible for participation in programs conducted under the authority of the Act.

[End of Provision]

**K.7 52.219-22 SMALL DISADVANTAGED BUSINESS STATUS (OCT 1998)**

- (a) General. This provision is used to assess an offeror's small disadvantaged business status for the purpose of obtaining a benefit on this solicitation. Status as a small business and status as a small disadvantaged business for general statistical purposes is covered by the provision at FAR 52.219-1, Small Business Program Representation.
- (b) Representations.
  - (1) General. The offeror represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either--
    - [ ] (i) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and
    - (A) No material change in disadvantaged ownership and control has occurred since its certification;

- (B) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
  - (C) It is listed, on the date of this representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration; or
  - ☐ (ii) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.
- (2) ☐ For Joint Ventures. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements at 13 CFR 124.1002(f) and that the representation in paragraph (b)(1) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture:\_\_\_\_\_.]
- (c) Penalties and Remedies. Anyone who misrepresents any aspects of the disadvantaged status of a concern for the purposes of securing a contract or subcontract shall--
- (1) Be punished by imposition of a fine, imprisonment, or both;
  - (2) Be subject to administrative remedies, including suspension and debarment; and
  - (3) Be ineligible for participation in programs conducted under the authority of the Small Business Act.

[End of Provision]

**K.8 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)**

The offeror represents that--

- (a) It ☐ has, ☐ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;
- (b) It ☐ has, ☐ has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

[End of Provision]



**K.9 52.222-25 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)**

The offeror represents that

- (a) It ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or
- (b) It ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

[End of Provision]

**K.10 52.223-1 CLEAN AIR AND WATER CERTIFICATION (APR 1984)**

The Offeror certifies that--

- (a) Any facility to be used in the performance of this proposed contract is ☐ , is not ☐ listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- (b) The Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the EPA, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- (c) The Offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

[End of Provision]

**K.11 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 1996)**

- (a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.
- (b) By signing this offer, the offeror certifies that--
  - (1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or--

- (2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: **(Check each block that is applicable.)**

- ☐ (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
- ☐ (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
- ☐ (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
- ☐ (iv) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in Section 19.102 of the Federal Acquisition Regulations; or
- ☐ (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

[End of Provision]

#### **K.12 52.230-1 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (APR 1998)**

NOTE: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

#### **I. DISCLOSURE STATEMENT--COST ACCOUNTING PRACTICES AND CERTIFICATION**

- (a) Any contract in excess of \$500,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.
- (b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy

the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

**CAUTION:** In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable, and (ii) One copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: \_\_\_\_\_

Name and Address of Cognizant ACO or Federal Official Where Filed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) Certificate of Previously Submitted Disclosure Statement.

The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: \_\_\_\_\_

Name and Address of Cognizant ACO or Federal Official Where Filed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

☐ (3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than \$25 million (of which at least one award exceeded \$1 million) in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) Certificate of Interim Exemption.

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under subparagraphs (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

**CAUTION:** Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$25 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

## **II. COST ACCOUNTING STANDARDS--ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE**

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$25 million in awards of CAS-covered prime contracts and subcontracts, or the offeror did not receive a single CAS-covered award exceeding \$1 million. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

**CAUTION:** An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$25 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$25 million or more.

**III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS**

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

/\_\_\_/ YES

/\_\_\_/ NO

[End of Provision]

**K.13 DEAR 952.204-73 FACILITY CLEARANCE [Deviation]****NOTICES**

**Statute prohibits the award of a contract under a national security program to a company owned by an entity controlled by a foreign government unless a waiver is granted by the Secretary of Energy.**

**Offerors who have either a Department of Defense or a Department of Energy facility clearance, generally need not resubmit the following FOCI information unless specifically requested to do so, instead, provide your DOE facility clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.**

**(a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328**

- (1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a facility clearance for the contractor organization and access authorizations (security clearances) for contractor personnel working with the classified information or special nuclear material. To obtain a facility clearance the offeror must submit a Certificate Pertaining to Foreign Interests, Standard Form 328.
- (2) Information submitted by the offeror in response to the Standard Form 328 shall be used solely for the purposes of evaluating FOCI and shall be treated by the DOE, to the extent permitted by law, as business or financial information submitted in confidence.
- (3) Following submission of a Standard Form 328, the contractor shall immediately submit to the contracting officer written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the contracting officer.

**(b) Definitions**

- (1) A foreign interest is defined as any of the following:
- (2) A foreign government, foreign government agency, or representative of a foreign government;

- (3) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and
  - (4) Any person who is not a citizen or national of the United States.
  - (5) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.
- (c) A facility clearance is an administrative determination that a facility is eligible for access to classified information or special nuclear materials. A Facility Clearance shall be based upon a determination that satisfactory safeguards and security measures are afforded the activities being performed at the facility. It is DOE policy that all contractors or subcontractors requiring access to classified information or special nuclear material be processed for a Facility Clearance at the level appropriate to the activities being performed at the facility. Approval for a Facility Clearance shall be based upon:
- (1) A favorable foreign ownership, control, or influence (FOCI) determination. This determination will be based upon the contractor's response to the ten questions in Standard Form 328 and any supporting data provided by the contractor. Prior to award of a contract, the DOE must determine that award of the contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The contracting officer may require the offeror to submit such additional information as deemed pertinent to this determination.
  - (2) A contract containing the appropriate security clauses.
  - (3) Approved safeguards and security plans which describe protective measures appropriate to the classified activities being performed at the facility.
  - (4) If access to nuclear materials is involved, an established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System.
  - (5) For a facility to possess classified matter or special nuclear material at its location, a survey conducted no more than 6 months before the facility clearance date, with a composite facility rating of satisfactory.
  - (6) Appointment of a Facility Security Officer, and, if applicable, a Materials Control and Accountability Representative. The Facility Security Officer must possess an access authorization equivalent to the Facility Clearance.
  - (7) Access authorizations for key management personnel. Key management personnel, who will be determined on a case-by-case basis, must possess access authorizations equivalent to the level of the Facility Clearance.
- (d) A Facility Clearance is required even for contracts which do not require contractor's offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which

require DOE access authorizations for the contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.

- (e) Facility Clearances are required prior to the granting of an access authorization under a contract.
- (f) Except as otherwise authorized in writing by the contracting officer, the provisions of any resulting contract shall require that the contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328 of this provision directly to the local Office of Safeguards and Security cognizant of the prime contract.

**NOTICE TO OFFERORS - CONTENTS REVIEW S Please Review Before Submitting**

Prior to submitting the Standard Form 328, required by paragraph (a)(1) above, the offeror should review the FOCI submission to ensure that:

- (1) The SF328 has been signed and dated by an authorized official of the company;
- (2) If publicly owned, the contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders have been attached;
- (3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents.
- (4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names; social security numbers; citizenship; titles of all positions they hold within the organization; and what clearances, if any, they possess or are in the process of obtaining and identification of the Government agency(ies) that granted or will be granting those clearances;
- (5) A consolidated financial information report has been attached;
- (6) A FOCI submission has been attached for each tier parent organization (i.e. ultimate parent and any intervening levels of ownership); and,
- (7) A summary FOCI data sheet.

NOTE: If any of these documents are missing, the contracting officer cannot complete award of the contract.

**K.14 952.209-8 ORGANIZATIONAL CONFLICTS OF INTEREST DISCLOSURE-- ADVISORY AND ASSISTANCE SERVICES (JUN 1997)**

- (a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

- (b) An offeror notified that it is the apparent successful offeror shall provide the statement described in paragraph (c) of this provision. For purposes of this provision, "apparent successful offeror" means the proposer selected for final negotiations or, where individual contracts are negotiated with all firms in the competitive range, it means all such firms.
- (c) The statement must contain the following:
  - (1) A statement of any past (within the past 12 months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.
  - (2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) above of this provision.
- (d) Failure of the offeror to provide the required statement may result in the offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

[End of Provision]